

SENATE BILL No. 358

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-57-1-1; IC 36-4-3-21.2.

Synopsis: Municipal utility contracts. Provides that where: (1) a municipal utility is providing service to properties located outside the municipality under contracts requiring the owners of the properties to make payments in lieu of annexation; and (2) the contracts expire; the municipal utility may not terminate utility service to the properties and, as a condition of continuing to receive the municipal utility service, the owners of the properties must continue paying for the utility service at the rate specified in the expired contracts, for one year or until the municipal utility and the owners of the properties enter into new contracts or the area in which the properties are located is annexed into the municipality. Provides that if, one year after the expiration of the contracts, the parties have not entered into new contracts for the provision of municipal utility service in the area, the parties are required to submit the matter to arbitration. Provides that: (1) the arbitration must be conducted by an arbitrator mutually chosen by the parties; (2) the arbitrator's award must establish reasonable and just terms of a new contract between the parties; and (3) if either party fails or refuses to enter into a new contract according to the terms of the award, the other party may commence legal action to enforce the award.

Effective: July 1, 2014.

Charbonneau

January 14, 2014, read first time and referred to Committee on Environmental Affairs.



Second Regular Session 118th General Assembly (2014)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

SENATE BILL No. 358

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-57-1-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 1. This chapter applies
3 to:
4 (1) any controversy existing between two (2) or more parties
5 which might be the subject of a suit at law, except as otherwise
6 provided in section 2 of this chapter; **and**
7 (2) **arbitration under IC 36-4-3-21.2 concerning services**
8 **provided by a municipal utility to properties located outside**
9 **the corporate boundaries of the municipality.**
10 SECTION 2. IC 36-4-3-21.2 IS ADDED TO THE INDIANA CODE
11 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
12 1, 2014]: **Sec. 21.2. (a) This section applies if:**
13 **(1) one (1) or more contracts were entered into under section**
14 **21(a)(1) of this chapter between:**
15 **(A) the executive and an administrative agency of a**
16 **municipality; and**



(B) the owners or lessees of properties located outside the corporate boundaries of the municipality; concerning the provision of municipal utility service in the area in which the properties referred to in clause (B) are located;

(2) the contracts expire;

(3) the area in which the properties referred to in subdivision (1)(B) are located has not been annexed into the municipality; and

(4) the parties have not agreed:

(A) to an extension of the contracts referred to in subdivision (1); or

(B) to enter into new contracts under section 21(a)(1) of this chapter.

(b) In a situation described in subsection (a), during the period beginning on the date of expiration of the contracts referred to in subsection (a)(1) and ending one (1) year later:

(1) the municipal utility service to the properties referred to in subsection (a)(1)(B) must continue to be provided, except in case of nonpayment of the compensation due under subdivision (2); and

(2) as a condition of continuing to receive municipal utility service, the owners or lessees of the properties referred to in subsection (a)(1)(B) must continue to pay for the municipal utility service at the rate specified in the expired contracts, including any payment or contribution of money to the municipality provided for in the expired contracts under section 21(a) of this chapter;

unless subsection (c) applies.

(c) If:

(1) the executive and administrative agency of the municipality and the owners or lessees of the properties referred to in subsection (a)(1)(B) enter into a new contract under section 21(a)(1) of this chapter concerning the provision of municipal utility service in the area in which the properties are located; or

(2) the area in which the properties referred to in subsection (a)(1)(B) are located is annexed into the municipality;

subsection (b) ceases to apply.

(d) In a situation described in subsection (a):

(1) if:

(A) municipal utility service to the properties continues



1 under subsection (b)(1); and
 2 (B) the owners or lessees of the properties continue to pay
 3 for the service under subsection (b)(2);
 4 for one (1) year after the date of expiration of the contracts;
 5 and
 6 (2) if:

7 (A) the executive and administrative agency of the
 8 municipality and the owners or lessees of the properties do
 9 not enter into a new contract under section 21(a)(1) of this
 10 chapter concerning the provision of municipal utility
 11 service in the area in which the properties are located; and
 12 (B) the area in which the properties are located is not
 13 annexed into the municipality;

14 within one (1) year after the date of expiration of the
 15 contracts;

16 the executive and administrative agency of the municipality and
 17 the owners or lessees of the properties referred to in subsection
 18 (a)(1)(B) shall submit to arbitration under subsection (e) the matter
 19 of the terms under which the municipal utility service will be
 20 provided in the future to the area in which the properties are
 21 located.

22 (e) The following apply to the arbitration of the matter set forth
 23 in subsection (d):

24 (1) The arbitration proceeding shall be conducted under
 25 IC 34-57-1 by an arbitrator mutually chosen by the parties.

26 (2) The municipality shall pay fifty percent (50%) of the cost
 27 of the arbitration proceeding and the owners or lessees of the
 28 properties referred to in subsection (a)(1)(B) shall pay fifty
 29 percent (50%) of the cost of the arbitration proceeding.

30 (3) During the arbitration proceeding and pending the
 31 decision of the arbitrator:

32 (A) the municipal utility service to the properties referred
 33 to in subsection (a)(1)(B) must continue to be provided,
 34 except in case of nonpayment of the compensation due
 35 under clause (B); and

36 (B) as a condition of continuing to receive municipal utility
 37 service, the owners or lessees of the properties referred to
 38 in subsection (a)(1)(B) must continue to pay for the
 39 municipal utility service at the rate specified in the expired
 40 contracts referred to in subsection (a)(1), including any
 41 payment or contribution of money to the municipality
 42 provided for in the expired contracts under section 21(a)



- 1 of this chapter.
- 2 **(4) The arbitrator shall consider all factors relevant to the**
- 3 **provision of the municipal utility service in the area in which**
- 4 **the properties referred to in subsection (a)(1)(B) are located,**
- 5 **including:**
- 6 **(A) the feasibility and cost of obtaining municipal utility**
- 7 **service in the area from another provider or through**
- 8 **another means; and**
- 9 **(B) the costs incurred by the municipality in extending**
- 10 **municipal utility service to the area, including**
- 11 **municipality's outlays for infrastructure necessary for**
- 12 **providing the municipal utility service in the area, and the**
- 13 **extent to which the municipality has recouped those**
- 14 **outlays.**
- 15 **(5) The award made by the arbitrator must establish**
- 16 **reasonable and just terms of a new contract between the**
- 17 **parties under section 21(a)(1) of this chapter, considering all**
- 18 **relevant factors.**
- 19 **(6) If either party fails or refuses to enter into a new contract**
- 20 **under section 21(a)(1) of this chapter according to the terms**
- 21 **of the arbitrator's award, the other party may commence**
- 22 **legal action to enforce the award under IC 34-57-1-13.**

